

ANALYSIS OF PROPOSED REVISION TO SENATOR ERVIN'S
ROUGH DRAFT PROPOSED AMENDMENTS TO S. 782*

Proposed Amendment
by Senator Ervin

REVISION

EXPLANATION

Sec. 1(k), p. 8, line 5, after the word "requests," strike period and insert following:	Sec. 1(k), p. 8, line 5, after the word "requests," strike period and insert following:	The revision was made for purposes of clarification and does not change the intent of the original wording. That wording connotes a "security clearance," a technical term involving a formal process intended to control access to classified information at a number of different levels in an enduring work situation. The suggested revision represents the more temporary and less sweeping needs of the situation, while still fully serving the objectives of the original language.
" : Provided, however, That a civilian employee of the United States serving in the CIA, the NSA, or the FBI may be accompanied by counsel, or by a person of his choice who serves in the agency in which the employee serves, who has been cleared as a good security risk by that agency for the purpose of the case."	" : Provided, however, That a civilian employee of the United States serving in the CIA or the NSA may be accompanied only by a person of his choice who serves in the agency in which the employee serves or by counsel who has been approved by the agency for access to the information involved."	

*NOTE:

1. All references to the FBI have been deleted.
2. In addition to the proposed revisions of Senator Ervin's proposed amendments, a revision of section 1(a) of the bill has been proposed as follows:
On page 2, line 15, insert after the word "origin" the words "or citizenship" and after the word "employee" the words "or person, or of his forebears . . .".
This revision recognizes that where citizenship is not a statutory condition of employment, it, as well as national origin, can be an important consideration in determining suitability for a particular assignment for employees and applicants, as can the citizenship or national origin of their forebears.

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Sec. 6, p. 19, at line 2, to read:

"a personal finding with regard to each grade or category of duties that such test or information is required to protect the national security."

Sec. 6, p. 19, at line 2, to read:

["a personal finding that such test or information is required to protect the national security."]

The revision does not change the underlying concept authorizing a personal finding that tests or examinations are required to protect the national security. Further review of the original language indicates that a grade or category of duties criterion would result in the establishment of arbitrary standards which are unworkable in practical application.

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

The revision includes applicants and assures that they are afforded no greater freedom of action than employees; it also binds those acting for applicants and employees to the same procedural rules; provides for extension of the 120 days upon a personal finding by the director of CIA or NSA that more time is necessary to resolve the case; and makes technical changes in the penultimate proviso to conform to 50 USC 833 which reposes the authority to terminate employees of NSA in the Secretary of Defense in the first instance with an authorized delegation to the director of NSA.

"Provided further, however, That no civilian employee of the United States serving in the CIA, the NSA, or the FBI shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation: Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the directors of the

"Provided further, however, That no civilian employee of the United States serving in the CIA or the NSA, and no applicant for employment with those agencies, and no individual or organization acting in behalf of such employee[or applicant], shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation:

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Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee:" ...

[Provided further, however, That the above period of 120 days may be extended if deemed necessary on a personal finding by the director of the agency involved.] Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 USC 403(c) and the authorities available to the National Security Agency under 50 USC 833 to terminate the employment of any employee:"...

On p. 19, line 20, add a new Sec. 8:

"Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the CIA, the NSA, or the FBI to protect or withhold government information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsection (k), or in any civil action under section 4, or in any proceeding or civil action under section 5.

On p. 19, line 20, add a new Sec. 8:

"Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the CIA or the NSA to protect or withhold information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any civil action under section 4, or in any proceeding or civil action under section 5.

Language added

The revision deletes the word "government" in the phrase "government information" to eliminate any possible conflict over the various language, e.g., official information, military information, classified defense information, intelligence sources and methods, used in statute or executive order to describe the information to be protected; and removes, as unnecessary, the restraints on outside counsel receiving classified information during an interrogation under section 1(k).

S. 782

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin; or the race, religion, or national origin of any of his forebears: Provided, however, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: Provided further, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person, or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for

assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: Provided, however,
That a civilian employee of the United States serving in the C.I.A.
or the N.S.A. may be accompanied only by a person of his choice
who serves in the agency in which the employee serves or by counsel
who has been approved by the agency for access to the information
involved,...

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SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting^{any} civilian employee[s] or applicants[s] to submit to any interrogation or examination, or to take a polygraph test, or to take a psychological test, designed to elicit from^{him} [them] information concerning^{his} [their] personal relationships with any person connected with them by blood or marriage, or concerning their religious beliefs or practices, or concerning^{his} [their] attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of Central Intelligence, Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding^{with regard to each individual to be so tested or} that such test or information examined is required to protect the national security.

Sec. 10 S. 782

SEC. 7. [Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: Provided, however, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights:] [Provided further, however, That] ~~no~~ civilian employee of the United States serving in the C.I.A. or the N.S.A., and [no applicant for employment with those agencies, and] no individual or organization acting in behalf of such employee [or applicant] shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to

prevent the threatened violation or to redress the actual violation: '

[Provided further, however, That the above period of 120 days may
be extended if deemed necessary on a personal finding by the director
of the agency involved:] Provided further, however, That nothing in
this Act shall be construed to affect any existing authority of the
Director of Central Intelligence under ^{*}50 USC 403(c) and the authorities
available to the National Security Agency under ^{*}50 USC 833 to terminate
the employment of any employee: [^{Sec. 10 (con.)}Provided further, however, That if
an employee or applicant elects to seek a remedy under either section
4 or section 5, he waives his right to proceed by an independent action
under the remaining section.]

*same thing, different wording

S. 782

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the C.I.A. or the N.S.A. to protect or withhold information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be ^{in any interrogation under section 1(k) or} admissible in evidence ^{in any civil action under section 4,} or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.